



WISCONSIN LEGISLATIVE COUNCIL

SPECIAL COMMITTEE ON EMERGENCY MANAGEMENT & CONTINUITY OF GOVERNMENT

Legislative Council Conference Room
Madison, WI

November 12, 2008
10:00 a.m. –2:50 p.m.

[The following is a summary of the November 12, 2008 meeting of the Special Committee on Emergency Management and Continuity of Government. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Jauch called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Senator Robert Jauch, Chair; Representative Joan Ballweg, Vice Chair; Representatives Samantha Kerkman and Marlin Schneider; and Public Members Gary Dalton, Dr. Azita Hamedani, Ken Hartje, Keith Kesler, Robert Ritger, Dean Roland, and Johnnie Smith.

COUNCIL STAFF PRESENT: Dick Sweet and Pam Shannon, Senior Staff Attorneys.

Approval of the Minutes of the October 1, 2008 Meeting

Representative Kerkman moved, seconded by Representative Schneider, to approve the minutes of the October 1, 2008 meeting. The motion passed on a voice vote.

Chair Jauch noted that Fire Chief Doug Holton will be joining the committee, but has not yet received formal approval by the Joint Legislative Council. When that occurs, Chair Jauch stated that Chief Holton's votes can be recorded on any drafts considered by the committee.

Report on Status of Subcommittee Work

Ms. Shannon summarized the activities of the subcommittee that is undertaking the recodification of ch. 166, Stats. That subcommittee has met three times and is scheduled to meet again on November 18. Mr. Sweet noted that the subcommittee reviewing continuity of legislative activity had met immediately prior to this meeting and had approved four drafts, described below, for consideration by the full committee.

Discussion of Draft Legislation on Continuity of Legislative Operations

Mr. Sweet described WLC: 0163/1, relating to the emergency seat of government. He noted that under current law, the Governor designates an emergency temporary seat of government. The draft allows the Legislature, by joint rule, to provide a process for designating a different emergency temporary seat of government for the Legislature. Under the draft, the Legislature could meet either at the location designated by the Governor or the location specified by the Legislature.

Rob Marchant, Senate Chief Clerk, suggested that the draft might include a provision that allows the Legislature to meet at an alternative site for practice purposes. He suggested adding a provision to this effect and a provision stating that all actions taken by the Legislature at any of the alternative locations would be considered to have occurred at the seat of government and would have the same legal effect as if the members were physically present at the seat of government. There was no objection to the changes suggested by Mr. Marchant.

Representative Schneider moved, seconded by Representative Kerkman, that the committee recommend introduction of WLC: 0163/1, as amended. The motion passed on a vote of Ayes, 11 (Sen. Jauch; Reps. Ballweg, Kerkman, and Schneider; and Public Members Dalton, Hamedani, Hartje, Kesler, Ritger, Roland, and Smith); and Noes, 0.

Mr. Sweet described WLC: 0123/1, relating to emergency interim successors for legislators. He noted that the draft requires legislators to file with the chief clerk for the legislator's house a list of not less than three nor more than seven emergency interim successors. If there are more than a specified number of vacancies in the house, the interim successors may fill the vacancies in the order listed until the vacancies are later filled by election. Mr. Sweet noted that the subcommittee had earlier recommended deleting the sentence on page 2, line 10, which requires that the list of successors be filed with the Secretary of State. There was consensus by the committee that this sentence should be deleted.

Representative Kerkman moved, seconded by Representative Schneider, that the committee recommend introduction of WLC: 0123/1, as amended. The motion passed on a vote of Ayes, 11 (Sen. Jauch; Reps. Ballweg, Kerkman, and Schneider; and Public Members Dalton, Hamedani, Hartje, Kesler, Ritger, Roland, and Smith); and Noes, 0.

Mr. Sweet described WLC: 0124/1, a proposed constitutional amendment relating to continuity of government. He noted that under art. IV, s. 34, Wis. Const., the Legislature, in order to ensure continuity of state and local government operations in periods of emergency resulting from enemy action in the form of an attack, must provide for prompt and temporary succession, and adopt such other

measures as may be necessary and proper for obtaining the objectives of that provision. Under the draft, the phrase “resulting from enemy action in the form of an attack” would be stricken so that the Legislature could provide for continuity of state and local government operations in other emergencies.

Representative Schneider moved, seconded by Representative Kerkman, that the committee recommend introduction of WLC: 0124/1. The motion passed on a vote of Ayes, 11 (Sen. Jauch; Reps. Ballweg, Kerkman, and Schneider; and Public Members Dalton, Hamedani, Hartje, Kesler, Ritger, Roland, and Smith); and Noes, 0.

Ms. Shannon described WLC: 0223/1, relating to virtual meetings of the Legislature and legislative committees. The draft would allow either house of the Legislature, pursuant to its rules or joint rules, to issue a notice that the house and its committees are prevented from physically meeting at the seat of government due to an emergency. If such a notice is issued, the house and any committee may conduct a virtual meeting and transact business through any means of communication by which all of several criteria are met.

Mr. Dalton expressed concerns about paragraph (d) on page 2, beginning on line 17, since he felt that the term “website” was too limiting. In response to this concern, Mr. Sweet suggested that this paragraph might be replaced by the following:

- (d) Within technological limits, a member of the public may monitor the proceedings of the house or committee.

Ms. Shannon also noted that Mr. Marchant had suggested including in this draft a provision allowing the Legislature to practice holding virtual meetings even if no emergency exists. There was no objection to including either of these changes in the draft.

Representative Schneider moved, seconded by Representative Kerkman, that the committee recommend introduction of WLC: 0223/1, as amended. The motion passed on a vote of Ayes, 11 (Sen. Jauch; Reps. Ballweg, Kerkman, and Schneider; and Public Members Dalton, Hamedani, Hartje, Kesler, Ritger, Roland, and Smith); and Noes, 0.

Discussion of Issues Related to Liability of Volunteers

Mr. Sweet noted that a working group involving representatives of Legislative Council staff, the Legislative Reference Bureau (LRB), the Department of Health Services (DHS), and others had been reviewing the Uniform Emergency Volunteer Health Practitioners Act and current Wisconsin statutes providing protection for volunteers in emergencies. He added that Bob Nelson and Robin Ryan of the LRB had prepared a chart that was distributed to the committee that compared various provisions in current law to the Uniform Act, and also had prepared a list of questions for the committee’s consideration.

Mr. Sweet noted that the working group had brought the issue back to the full committee since there were several policy issues that needed to be addressed. He mentioned that the biggest of these was whether to provide immunity from liability to volunteers in emergencies or provide that these volunteers

are to be treated as agents of the state. Mr. Sweet described s. 250.042 (4), Stats., under which health care volunteers are treated as agents of the state for purposes of limits on damages, payment of damages, and legal representation. Under current s. 166.03 (10), Stats., volunteers who provide equipment, materials, facilities, labor, or services in an emergency, under the direction of specified officials, are immune from liability. He noted that there could be situations in which a person is covered by both of these statutes and there is some question as to whether they are immune from liability or treated as an agent of the state. The Uniform Act provides immunity for health care volunteers.

In discussing s. 250.042 (4), Stats., Mr. Sweet noted that it covers a variety of health care providers who are either currently licensed or have been licensed in Wisconsin at some time in the previous 10 years. In response to suggestions raised by Representatives Schneider and Kerkman regarding use of retirees from neighboring states and border communities, Dr. Hamedani suggested that we include licensees in other states and also include those who have been licensed within the previous 10 years in the four states bordering Wisconsin. Shelley Malofsky, DHS, noted that legal representation by DHS is provided in situations in which a health care volunteer falls under s. 250.042 (4), Stats., but such representation is not provided in situations in which a volunteer asserts immunity under s. 166.03 (10), Stats. She suggested that the committee may wish to review this discrepancy. Representative Schneider mentioned that there may be political issues with providing immunity from liability in all situations involving emergencies.

In response to a question from Mr. Sweet as to whether s. 250.042 (4), Stats., if retained, should include emergency medical technicians, first responders, ambulance service providers, funeral directors, and veterinary technicians, Dr. Hamedani suggested that the list should include these types of providers. There was a consensus by the committee on this issue.

Senator Jauch suggested that the working group be reconvened and include Dr. Hamedani in its deliberations.

Discussion of Memo No. 1, Issues for Consideration by the Special Committee

Memo No. 1, entitled *Issues for Consideration by the Special Committee*, is a compilation of issues that have been suggested either by members of the committee or by persons testifying before the committee. In discussing item 24, Dr. Hamedani stated that health facilities' hands will be tied unless these issues are addressed. For example, she stated that a hospital may be over its capacity during a surge due to an emergency. Mr. Ritger stated that a hospital working group is preparing a list of waivers to certain requirements that might be needed during an emergency and that the working group will meet again in November and January. Chair Jauch suggested that the committee could review this issue again in December and asked that Mr. Ritger report back to the committee.

In discussing item 1, Chair Jauch noted that the Wisconsin Disaster Fund covers only natural disasters. In response to a question, Diane Kleiboer, of Wisconsin Emergency Management (WEM) stated that the original legislation that created the Wisconsin Disaster Fund provided \$3 million in each year of the biennium. In the subsequent biennium, this was reduced to \$1 million for the entire biennium and WEM currently has claims that have been submitted that would use up the entire balance. She suggested that \$1 million per year may be enough to address the average three to five disasters per year that do not qualify for federal funding. Ms. Shannon added that the statute that discusses payments

to local units of government does not include American Indian tribes, but that the WEM administrative rule on this subject does.

Chair Jauch asked that staff prepare a bill draft addressing the concerns that have been raised regarding the Wisconsin Disaster Fund for review at the committee's December meeting.

With regard to item 2, Representative Ballweg mentioned that she had worked with Senator Robson on this issue in the last session. She added that being part of a mutual aid system would not preclude water and wastewater utilities from being part of another system. Chair Jauch asked that staff prepare a draft based on legislation that was considered in the last session of the Legislature.

Regarding item 5, Chair Jauch suggested that a bill draft be prepared that would address the issue of exempting local emergency costs from levy limits. Following discussion, Chair Jauch asked that staff contact the Legislative Fiscal Bureau (LFB) and provide options for addressing this issue.

The committee next discussed item 3, relating to regional search and rescue teams. Mr. Hartje suggested that firefighters were being trained, but not necessarily contacted in times of emergency to deal with heavy rescue. Chief Holton of Milwaukee stated that these personnel have the equipment and training, but that fire agencies need to deal with issues involving filling in for persons who are working on the team and overtime issues. He suggested using, for the search and rescue teams, the model that had been developed for regional hazardous materials teams. Mr. Kesler stated that it is not important whether we have one or four regional teams, since the equipment to deal with these issues will stay where it currently is regardless of the number of teams. Mr. Ritger suggested that the financial burden for dealing with building collapses should first be on the insurers and owners of those buildings.

Chair Jauch asked whether there should be a single team or four regional teams and how we would pay for this. He asked that staff contact the LFB to explore funding sources for this purpose.

Chair Jauch noted that items 7 to 10 had been addressed in the discussion of subcommittees and working group deliberations earlier in the meeting.

With regard to item 13, relating to coordination between WEM and the Office of Justice Assistance, Mr. Smith stated that the two agencies know what their respective roles are. Chair Jauch noted that no legislation was needed in this area. Regarding item 14, which involves review of state infrastructure, Representative Kerkman stated that the Legislative Audit Bureau had conducted an audit regarding bridges and Chair Jauch noted that the Department of Natural Resources has a budget proposal regarding dams.

On the issue of Wisconsin's lack of status as a coastline state as determined by the Department of Homeland Security, Chair Jauch asked that staff prepare a letter for the committee to send to the federal agency on this issue.

With regard to item 17, Mr. Smith noted that WEM already has a template for local units of government to use in assessing damages.

Regarding issues affecting rural counties, Mr. Kesler and Sheriff Roland noted that there were issues regarding training of local emergency personnel. Sheriff Roland stated that Burnett County is losing first responders. Mr. Kesler noted that it is difficult to find enough people locally to conduct a

training class, so it is necessary to transport people 40 or 50 miles away to attend a class. Chief Holton noted that in terms of training requirements, the state does not distinguish between volunteer and career firefighters. Chair Jauch asked that staff contact DHS to have a representative of that agency speak to the committee at the next meeting to address this issue.

With respect to item 20, involving mutual aid to tribal law enforcement, Mr. Sweet stated that he had spoken with a person on the Legislative Council staff who deals with American Indian issues. That person had stated that there is no simple fix because of tribal sovereignty issues and that they are reviewing options to address this issue. An opinion by the Attorney General noted that the current law enforcement mutual aid statute does not include tribal law enforcement. Chair Jauch asked that this item be kept on the list for the committee's consideration at a future meeting.

Regarding forceful removal of individuals from their home during emergencies, Representative Ballweg stated that she has done some research on this issue and can report to the committee at the next meeting.

Chair Jauch noted that another Legislative Council study committee was reviewing the issue of school shootings. Sheriff Roland wanted to make sure that school shootings were included in the definition of "disasters" in ch. 166, Stats.

Robin Schmidt, Department of Agriculture, Trade and Consumer Protection (DATCP) presented three issues to the committee regarding agricultural emergencies. The first dealt with carcass disposal and new technologies for disposing of animal carcasses. The second dealt with plant quarantines and the penalties associated with violating statutes regarding that issue. Finally, the third issue dealt with interstate pest control. Wisconsin has not been allowed to participate in a compact on this subject since not all four of its neighboring states participate; Iowa does not participate and this precludes Wisconsin from being a part of it. On the last issue, which would strike "Iowa" from the law, Representative Ballweg noted that Wisconsin's participation would be prohibited if another neighboring state opted not to participate. Chair Jauch asked that staff prepare drafts based on the three DATCP suggestions.

Other Business

There was no other business brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will held on *Thursday, December 18, 2008, at 10:00 a.m., in the Large Conference Room at the Legislative Council.*

Adjournment

The meeting was adjourned at 2:50 p.m.

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